

I hereby certify that this correspondence is being filed by depositing it with the United States Postal Service as first class mail in an envelope with sufficient postage and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231 on the date indicated below.

Date: August 20, 2001

Signed: Peter K. Trzyna
Peter K. Trzyna (Reg. No. 32,001)

PATENT

Paper No. 3

File: Proflowers-P1-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors : David McCarter, Jared Schutz
Serial No. : 09/776,956
Filed : February 5, 2001
For : GENERATING A COURIER SHIPPING LABEL OR THE LIKE, INCLUDING AN ORNAMENTAL GRAPHIC DESIGN, AT A NON-COURIER PRINTER
Group Art Unit : 2624
Examiner :

Honorable Commissioner of Patents
and Trademarks
Washington, D.C. 20231

DECLARATION OF JARED SCHUTZ

SIR:

1. I am an above-named joint inventor and have signed a Declaration and Power of Attorney in the above-referenced patent application.
2. I believe that David McCarter is another joint inventor in the above-referenced patent application, has a last known address of 12213 Carmel Vista Road #235, San Diego, California 92130, and has refused to sign his declaration.
3. ProFlowers, Inc. is a juristic entity of with sufficient proprietary interest in the above-referenced patent application, as per the enclosed Assignment by the omitted inventor.
4. I am Chairman of the Board of ProFlowers, Inc., and I believe that I am

authorized to sign this Declaration on behalf of ProFlowers, Inc., the omitted inventor.

5. This filing is to supplement my Declaration and Power of Attorney with this Declaration and Power of Attorney signed on behalf of the omitted joint inventor.

6. Additionally, this filing being made on behalf of ProFlowers, Inc. to preserve the rights of the parties and to prevent the irreparable damage that would otherwise occur, namely abandonment of the above-referenced patent application due to the failure to respond properly to the Notice to File Missing parts issued in this case, and loss of the filing date at this point is believed to transgress a statutory bar from commercial use of the invention at about the time of Valentines Day 2000.

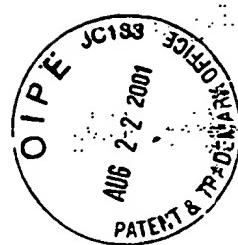
7. Accompanying this Declaration is a Declaration in support of filing on behalf of the omitted inventor.

I hereby declare that all statements made herein of knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statement may jeopardize the validity of the application or any patent issued thereon.

Date: _____, 2001

Jared Schutz

Chairman of the Board
ProFlowers, Inc.



INTERNATIONAL

authorized to sign this Declaration on behalf of ProFlowers, Inc., the omitted inventor.

5. This filing is to supplement my Declaration and Power of Attorney with this Declaration and Power of Attorney signed on behalf of the omitted joint inventor.

6. Additionally, this filing being made on behalf of ProFlowers, Inc. to preserve the rights of the parties and to prevent the irreparable damage that would otherwise occur, namely abandonment of the above-referenced patent application due to the failure to respond properly to the Notice to File Missing parts issued in this case, and loss of the filing date at this point is believed to transgress a statutory bar from commercial use of the invention at about the time of Valentines Day 2000.

7. Accompanying this Declaration is a Declaration in support of filing on behalf of the omitted inventor.

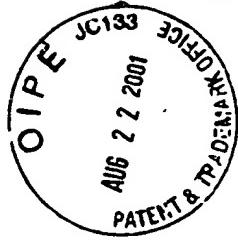
I hereby declare that all statements made herein of knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statement may jeopardize the validity of the application or any patent issued thereon.

Date: August 20, 2001

Jared Schutz

Chairman of the Board
ProFlowers, Inc.

BEST AVAILABLE COPY



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Date: AUGUST 20, 2001

Signed Peter K. Trama
Peter K. Trama (Reg. No. 32,601)

PATENT

Paper No. 3

File: Proflowers-P1-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors : David McCarter, Jared Schutz
Serial No. : 09/776,956
Filed : February 5, 2001
For : GENERATING A COURIER SHIPPING LABEL OR THE LIKE, INCLUDING AN ORNAMENTAL GRAPHIC DESIGN, AT A NON-COURIER PRINTER
Group Art Unit :
Examiner :

Honorable Commissioner of Patents
and Trademarks
Washington, D.C. 20231

DECLARATION OF WILLIAM STRAUSS

SIR:

I, William Strauss, having personal knowledge of the facts set forth herein, hereby deposes and says that:

1. I am the President and Chief Executive Officer of ProFlowers, Inc. (ProFlowers), a corporation under the laws of the State of Delaware, having an address of 505 Water Ridge Drive, San Diego, California 92121, which is the assignee of the above-identified U.S. patent application by the assignments executed by the respective inventors.

2. Mr. Jared Schutz, who has changed his last name to Polis, has executed a DECLARATION AND POWER OF ATTORNEY as original, first, and joint inventors of the

subject matter which is claimed in the above-referenced U.S. patent application.

3. Mr. David McCarter, who was employed by ProFlowers and compensated for participating in the conception and development of aspects of the invention set forth in the above-referenced patent application, for and in combination with the work of Jared Polis, has refused to execute a Declaration and Power of Attorney, though ProFlowers has done all reasonably possible to obtain execution of the Declaration.

4. After the invention thereof, Mr. David McCarter ceased to be employed by ProFlowers, and has a last known address of 12213 Carmel Vista Road, #235, San Diego, CA 92130.

5. As per the enclosed June 19, 2001, letter from Steve Kemper, Chief Financial Officer of ProFlowers, a package including Declaration and Power of Attorney, an Assignment (with check, to have a cleaner paper trail), and a copy of the patent application was sent to Mr. David McCarter to his last-known residential address, by Certified Mail.

6. However, Mr. David Carter did not claim the package, which was returned.

7. In a further attempt to obtain Mr. David Carter's signature on the Declaration, the same package was sent to Mr. McCarter at the same address by Federal Express, which as shown in the enclosed, has posted a successful delivery notice as follows:
Tracking Number : 810152580483

Ship Date :

Delivered To : Recipient

Delivery Location : SAN DIEGO CA

Delivery Date/Time : 07/18/2001 09:53

Signed For By : C. CREGG

Service Type : Priority Box

Scan Activity Date/Time Scan Exceptions

Delivered SAN DIEGO CA 07/18/2001 09:53 No signature required - release waiver on file

Delivered SAN DIEGO CA 07/18/2001 09:53 No signature required - release waiver on file

On FedEx vehicle for delivery SAN DIEGO CA 07/18/2001 08:21

Arrived at FedEx Destination Location SAN DIEGO CA 07/18/2001 07:05

Left FedEx Origin Location SAN DIEGO CA 07/17/2001 18:41

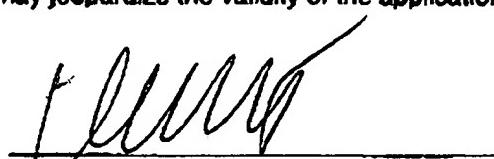
Picked up by FedEx SAN DIEGO CA 07/17/2001 16:31

8. There was no response from Mr. David McCarter.

9. Mr. David McCarter has been fully compensated for participation in the invention of the above-referenced patent application, and has a duty to cooperate in this patent application and execute the Declaration and the Assignment pursuant to the EMPLOYEE INNOVATIONS AND PROPRIETARY RIGHTS ASSIGNMENT AGREEMENT signed by Mr. David McCarter and enclosed herewith.

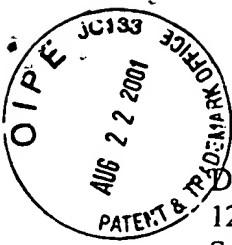
I hereby declare that all statements made herein of knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such wilful false statement may jeopardize the validity of the application or any patent issued thereon.

Date: August 20, 2001 2001



William Strauss

President and Chief Executive Officer
ProFlowers, Inc.



David McCarter
12213 Carmel Vista Road, #235
San Diego CA 92130



Via Certified Mail
Return Receipt Requested

Tuesday, June 19, 2001

**Re: Signatures of Declaration and Assignment for Patent Entitled
"Generating A Courier Shipping Label . . . ", 2 sets P1-01 and P2-01**

Dear David,

The Official Filing Receipt for the above-named patent has been received from the U.S. Patent and Trademark Office (USPTO) as of June 5. A Notice to File Missing Parts has been received as well. A complete copy of the patent application has been provided for you and does not need to be returned.

To complete the filing, sign the enclosed two sets of (1) the Assignment of Invention and (2) the Declaration and Power of Attorney.

The second set has been provided by our patent attorney as a remedy for a typographical error that occurred with the original filing of the application:

The deadline for completing the filing is July 19th. Please sign both sets and return to me in the envelope provided.

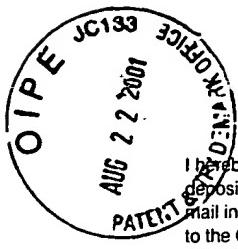
Sincerely,

A handwritten signature in black ink, appearing to read "Steve Kemper".

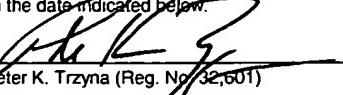
Steve Kemper
Chief Financial Officer & Treasurer

Encl: 2 sets Assignment & Declaration P1-01 & P1-02
Copy of Patent Application

address: 5005 Wateridge Vista Drive
Second Floor
San Diego, CA 92121-5780
voice: 858.729.2800
fax: 858.784.6329
e-mail: info@proflowers.com
web: www.proflowers.com



I hereby certify that this correspondence is being filed by deposit with the United States Postal Service as first class mail in an envelope with sufficient postage and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231 on the date indicated below.

Signed: 
Peter K. Trzyna (Reg. No. 32,601)

Date: August 20, 2001

PATENT

Paper No. 3

File: Proflowers-P1-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors : David McCarter, Jared Schutz
Serial No. : 09/776,956
Filed : February 5, 2001
For : GENERATING A COURIER SHIPPING LABEL OR THE LIKE, INCLUDING AN ORNAMENTAL GRAPHIC DESIGN, AT A NON-COURIER PRINTER
Group Art Unit : 2624
Examiner :

Honorable Commissioner of Patents
and Trademarks
Washington, D.C. 20231

DECLARATION AND POWER OF ATTORNEY

SIR:

With respect to the above-identified enclosed Patent Application, as a below-named inventor, I hereby declare that:

My residence and post office address, and citizenship, are correctly stated below.

I believe that I am an original and co-first inventor of the subject matter which is claimed and for which a patent is sought on the invention in the undersigned's above-identified Patent Application. I hereby state that I have reviewed and understand the contents of the above-

identified specification, including the claims. I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a)(b), and (c) which state in part:

(a)...Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned... There is no duty to submit information which is not material to the patentability of any existing claim... The Office encourages applicants to carefully examine:...

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentability defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;...

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to

establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

I do not know and do not believe the invention was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof or more than one year prior to this application and that the same was not in public use or on sale in the United States of America more than one year prior to this application.

I hereby appoint the following as my attorney to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: Peter K. Trzyna (Reg. No. 32,601).

Address all correspondence to Peter K. Trzyna, P.O. Box 7131, Chicago, IL 60680-7131.

Address all telephone calls to Peter K. Trzyna at telephone number (312) 240-0824.

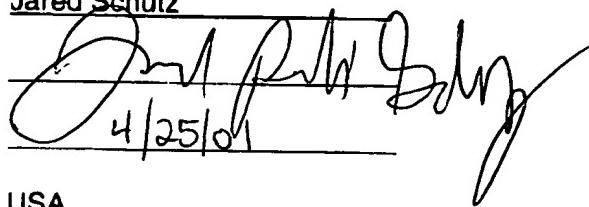
I hereby declare that all statements made herein of my own knowledge are true and that all

statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statement may jeopardize the validity of the application or any patent issued thereon.

Inventor's Printed Full Name:

Jared Schutz

Inventor's Signature:



A handwritten signature in black ink, appearing to read "Jared Schutz". Below the signature, the date "4/25/01" is written in a smaller, handwritten font.

Date:

USA

Residence & Post Office Address:

200 Hawthorne Avenue

City:

Boulder

State Zip:

Colorado, 80302

RECORDATION FORM COVER SHEET

U.S. Department of Commerce
Patent And Trademark Office

PATENTS ONLY

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original document or copy thereof.

1. Name of conveying party(ies):
David McCarter

Additional name(s) of conveying party(ies) attached?

Yes No

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: _____

2. Name and address of receiving party(ies):
Name: ProFlowers, Inc.

Internal Address: _____

Street Address: 5005 Water Ride Vista Drive

City: San Diego

State: California Zip: 92121

Additional name(s) & address(es) attached?

Yes X No

4. Application number(s) or registration number(s): 09/776,956

If this document is being filed together with a new application, the execution date of the application is _____

A. Patent Application No.(s) 09/776,956

B. Patent No.(s) _____

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Peter K. Trzyna

Internal Address: P.O. Box 7131

City: CHICAGO State: IL Zip: 60680

6. Total number of applications and patents involved 1

7. Total fee (37 C.F.R. 3.41)--- \$ 40.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: 50-0235

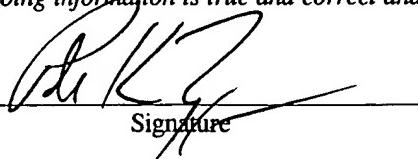
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Peter K. Trzyna
Name of Person Signing


Signature


Date

Total number of pages including cover sheet, attachments and document: 9

PROFLOWERS.COM

EMPLOYEE INNOVATIONS AND PROPRIETARY RIGHTS ASSIGNMENT AGREEMENT

This Agreement is intended to formalize in writing certain understandings and procedures which have been in effect since the time I was initially employed by Proflowers.com ("Proflowers") In return for my new or continued employment by Proflowers and other good and valuable consideration, the receipt and sufficiency of which I hereby acknowledge, I acknowledge and agree that:

1. Prior Work. All previous work done by me for Proflowers relating in any way to the conception, reduction to practice, creation, derivation, design, development, manufacture, sale or support of products or services for Proflowers is the property of Proflowers, and I hereby assign to Proflowers all of my right, title and interest in and to such previous work.

2. Proprietary Information. My employment creates a relationship of confidence and trust between Proflowers and me with respect to any information:

(a) Applicable to the business of Proflowers; or

(b) Applicable to the business of any client or customer of Proflowers, which may be made known to me by Proflowers or by any client or customer of Proflowers, or learned by me in such context during the period of my employment.

All such information has commercial value in the business in which Proflowers is engaged and is hereinafter called "Proprietary Information." By way of illustration, but not limitation, Proprietary Information includes any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of Proflowers, and includes, without limitation, respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information. "Proprietary Information" also includes proprietary or confidential information of any third party who may disclose such information to Proflowers or to me in the course of Proflowers' business.

3. Ownership and Nondisclosure of Proprietary Information. All Proprietary Information is the sole property of Proflowers, Proflowers' assigns, and Proflowers' customers, and Proflowers, Proflowers' assigns and Proflowers' customers shall be the sole and exclusive owner of all patents, copyrights, mask works, trade secrets and other rights in the Proprietary Information. I hereby do and will assign to Proflowers all rights, title and interest I may have or acquire in the Proprietary Information. At all times, both during my employment by Proflowers and after termination of such employment, I will keep in confidence and trust all Proprietary Information, and I will not use or disclose any Proprietary Information or anything directly

relating to Proprietary Information without the written consent of Proflowers, except as may be necessary in the ordinary course of performing my duties as an employee of Proflowers.

4. Ownership and Return of Materials. All materials (including, without limitation, documents, drawings, models, apparatus, sketches, designs, lists, and all other tangible media of expression) furnished to me by Proflowers shall remain the property of Proflowers. Upon termination of my employment, or at any time on the request of Proflowers before termination, I will promptly (but no later than five (5) days after the earlier of my employment's termination or Proflowers' request) destroy or deliver to Proflowers, at Proflowers' option, (a) all materials furnished to me by Proflowers, (b) all tangible media of expression which are in my possession and which incorporate any Proprietary Information or otherwise relate to Proflowers' business, and (c) written certification of my compliance with my obligations under this sentence.

5. Innovations. As used in this Agreement, the term "Innovations" means all processes, machines, manufactures, compositions of matter, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how, ideas (whether or not protectable under trade secret laws), and all other subject matter protectable under patent, copyright, moral right, mask work, trademark, trade secret or other laws, and includes without limitation all new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, discoveries, artwork, software, and designs. "Innovations" includes "Inventions," which is defined to mean any inventions protected under patent laws.

6. Disclosure of Prior Innovations. I have identified on Exhibit A ("Prior Innovations") attached hereto all Innovations, applicable to the business of Proflowers or relating in any way to Proflowers' business or demonstrably anticipated research and development or business, which were conceived, reduced to practice, created, derived, developed, or made by me prior to my employment with Proflowers (collectively, the "Prior Innovations"), and I represent that such list is complete. I represent that I have no rights in any such Innovations other than those Prior Innovations specified in Exhibit A ("Prior Innovations"). If there is no such list on Exhibit A ("Prior Innovations"), I represent that I have neither conceived, reduced to practice, created, derived, developed nor made any such Prior Innovations at the time of signing this Agreement.

7. Assignment of Innovations; License of Prior Innovations. I hereby agree promptly to disclose and describe to Proflowers, and I hereby do and will assign to Proflowers or Proflowers' designee my entire right, title, and interest in and to, (a) each of the Innovations (including Inventions), and any associated intellectual property rights, which I may solely or jointly conceive, reduce to practice, create, derive, develop or make during the period of my employment with Proflowers, which either (i) relate, at the time of conception, reduction to practice, creation, derivation, development, or making of such Innovation, to Proflowers' business or actual or demonstrably anticipated research or development, or (ii) were developed on any amount of Proflowers' time or with the use of any of Proflowers' equipment, supplies, facilities or trade secret information, or (iii) resulted from any work I performed for Proflowers, and (b) each of the Innovations which is not an Invention (as demonstrated by me by evidence meeting the clear and convincing standard of proof), and any associated intellectual property

rights, which I may solely or jointly conceive, develop, reduce to practice, create, derive, develop, or make during the period of my employment with Proflowers, which are applicable to the business of Proflowers (collectively, the Innovations identified in clauses (a) and (b) are hereinafter the "Proflowers Innovations"). To the extent any of the rights, title and interest in and to Proflowers Innovations cannot be assigned by me to Proflowers, I hereby grant to Proflowers an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable rights, title and interest. To the extent any of the rights, title and interest in and to Proflowers Innovations can be neither assigned nor licensed by me to Proflowers, I hereby irrevocably waive and agree never to assert such non-assignable and non-licensable rights, title and interest against Proflowers or any of Proflowers' successors in interest to such non-assignable and non-licensable rights. I hereby grant to Proflowers or Proflowers' designees a royalty free, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice all applicable patent, copyright, moral right, mask work, trade secret and other intellectual property rights relating to any Prior Innovations which I incorporate, or permit to be incorporated, in any Proflowers Innovations. Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, any Prior Innovations in any Proflowers Innovations without Proflowers' prior written consent.

8. Future Innovations. I recognize that Innovations or Proprietary Information relating to my activities while working for Proflowers and conceived, reduced to practice, created, derived, developed, or made by me, alone or with others, within three (3) months after termination of my employment may have been conceived, reduced to practice, created, derived, developed, or made, as applicable, in significant part while employed by Proflowers. Accordingly, I agree that such Innovations and Proprietary Information shall be presumed to have been conceived, reduced to practice, created, derived, developed, or made, as applicable, during my employment with Proflowers and are to be promptly assigned to Proflowers unless and until I have established the contrary by written evidence satisfying the clear and convincing standard of proof.

9. Cooperation in Perfecting Rights to Proprietary Information and Innovations.

(a) I agree to perform, during and after my employment, all acts deemed necessary or desirable by Proflowers to permit and assist Proflowers, at Proflowers' expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Proprietary Information and Innovations assigned or licensed to, or whose rights are irrevocably waived and shall not be asserted against, Proflowers under this Agreement. Such acts may include, but are not limited to, execution of documents and assistance or cooperation (i) in the filing, prosecution, registration, and memorialization of assignment of any applicable patents, copyrights, mask work, or other applications, (ii) in the enforcement of any applicable patents, copyrights, mask work, moral rights, trade secrets, or other proprietary rights, and (iii) in other legal proceedings related to the Proprietary Information or Innovations.

(b) In the event that Proflowers is unable for any reason to secure my signature to any document required to file, prosecute, register, or memorialize the assignment of any patent, copyright, mask work or other applications or to enforce any patent, copyright, mask work, moral right, trade secret or other proprietary right under any Proprietary Information

(including improvements thereof) or any Innovations (including derivative works, improvements, renewals, extensions, continuations, divisionals, continuations in part, continuing patent applications, reissues, and reexaminations thereof), I hereby irrevocably designate and appoint Proflowers and Proflowers' duly authorized officers and agents as my agents and attorneys-in-fact to act for and on my behalf and instead of me, (i) to execute, file, prosecute, register and memorialize the assignment of any such application, (ii) to execute and file any documentation required for such enforcement, and (iii) to do all other lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance, and enforcement of patents, copyrights, mask works, moral rights, trade secrets or other rights under the Proprietary Information, or Innovations, all with the same legal force and effect as if executed by me.

10. No Violation of Rights of Third Parties. My performance of all the terms of this Agreement and as an employee of Proflowers does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me prior to my employment with Proflowers, and I will not disclose to Proflowers, or induce Proflowers to use, any confidential or proprietary information or material belonging to any previous employer or others. I am not a party to any other agreement which will interfere with my full compliance with this Agreement. I agree not to enter into any agreement, whether written or oral, in conflict with the provisions of this Agreement.

11. Survival. This Agreement (a) shall survive my employment by Proflowers; (b) does not in any way restrict my right or the right of Proflowers to terminate my employment at any time, for any reason or for no reason; (c) inures to the benefit of successors and assigns of Proflowers; and (d) is binding upon my heirs and legal representatives.

12. Nonassignable Inventions. This Agreement does not apply to an Invention which qualifies fully as a nonassignable invention under the provisions of Section 2870 of the California Labor Code. I acknowledge that a condition for an Invention to qualify fully as a non-assignable invention under the provisions of Section 2870 of the California Labor Code is that the invention must be protected under patent laws. I have reviewed the notification in Exhibit B ("Limited Exclusion Notification") and agree that my signature acknowledges receipt of the notification. However, I agree to disclose promptly in writing to Proflowers all Innovations (including Inventions) conceived, reduced to practice, created, derived, developed, or made by me during the term of my employment and for three (3) months thereafter, whether or not I believe such Innovations are subject to this Agreement, to permit a determination by Proflowers as to whether or not the Innovations should be the property of Proflowers. Any such information will be received in confidence by Proflowers.

13. Nonsolicitation. During the term of this Agreement and for a period of one year thereafter, irrespective of the reason for termination of employment, Employee agrees not to, directly or indirectly, separately or in association with others:

13.1 Interfere with, impair, disrupt or damage Proflowers' relationship with any of its clients or prospective clients by soliciting or encouraging or causing others to solicit or encourage, any of them for the purpose of diverting or taking away the business such clients have with Proflowers; or

13.2 Interfere with, impair, disrupt or damage Proflowers' business by soliciting, encouraging or causing others to solicit or encourage any of Proflowers' employees to discontinue their employment with Proflowers.

14. Injunctive Relief. A breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to Proflowers for which there will be no adequate remedy at law, and Proflowers shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

15. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by telecopy or facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notices to me shall be sent to any address in Proflowers' records or such other address as I may specify in writing. Notices to Proflowers shall be sent to Proflowers' Human Resources Department or to such other address as Proflowers may specify in writing.

16. Governing Law. This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of California, as such laws are applied to agreements entered into and to be performed entirely within California between California residents. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in California, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in California, such personal jurisdiction shall be nonexclusive.

17. Severability. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

18. Waiver; Amendment; Modification. The waiver by Proflowers of a term or provision of this Agreement, or of a breach of any provision of this Agreement by me, shall not be effective unless such waiver is in writing signed by Proflowers. No waiver by Proflowers of, or consent by Proflowers to, a breach by me, will constitute a waiver of, consent to or excuse of any other or subsequent breach by me. This Agreement may be amended or modified only with the written consent of both me and Proflowers. No oral waiver, amendment or modification shall be effective under any circumstances whatsoever.

19. Entire Agreement. This Agreement represents my entire understanding with Proflowers with respect to the subject matter of this Agreement and supersedes all previous understandings, written or oral.

I certify and acknowledge that I have carefully read all of the provisions of this Agreement and that I understand and will fully and faithfully comply with such provisions.

Proflowers.com

Employee

By:

Kathy Flanagan
HR Manager

Title

Dated: 1/24/00

By:

David McCarter

Printed Name:

Dated: 1/24/04

Exhibit A
PRIOR INNOVATIONS

1. All current and future tips, tricks articles, sample program and files on the VB Tips & Tricks web site (www.vbtt.com) are the sole property of David McCarter.
2. All text and sample code/programs in any current or future books written by David McCarter remain the sole property of David McCarter and/or the publishing company of the book.
3. All text, tips, sample code/programs using in any course, seminar or lectures taught by David McCarter (current and future) remain sole property of David McCarter.
4. All text and sample code/program written for any publication remains the sole property of that publications publisher and/or David McCarter
5. All code written by David McCarter on a consulting basis for any company/individual remains the sole property of that company/individual and/or David McCarter as long as it does not conflict with Proflowers.com
6. Any software written by David McCarter for NicheWare remains the sole property of David McCarter and NicheWare.

A handwritten signature consisting of stylized initials, possibly "QJM".

Exhibit B

LIMITED EXCLUSION NOTIFICATION

THIS IS TO NOTIFY you in accordance with Section 2872 of the California Labor Code that the foregoing Agreement between you and Proflowers does not require you to assign or offer to assign to Proflowers any invention that you developed entirely on your own time without using Proflowers' equipment, supplies, facilities or trade secret information except for those inventions that either:

- (1) Relate at the time of conception or reduction to practice of the invention to Proflowers' business, or actual or demonstrably anticipated research or development of Proflowers; or
- (2) Result from any work performed by you for Proflowers.

To the extent a provision in the foregoing Agreement purports to require you to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable.

This limited exclusion does not apply to any patent or invention covered by a contract between Proflowers and the United States or any of its agencies requiring full title to such patent or invention to be in the United States.

I ACKNOWLEDGE RECEIPT of a copy of this notification.

By: David M Carter
(Printed Name of Employee)
Date: 1/24/99

Witnessed by:

Kathy Haugue
(Printed Name of Proflowers Representative)
Dated: 1/24/99